

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1595 of 1997

in

SPECIAL CIVIL APPLICATION No 4387 of 1985

with

CIVIL APPLICATION NO. 12213 OF 1997

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

and

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

MAHESHBHAI G SHAH

Versus

MANAGING DIRECTOR

Appearance:

MR YN OZA for Appellants

MR DG CHAUHAN WITH MR DEEPAK V PATEL for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 3, 4, 5, 6, 7

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

and

MR.JUSTICE J.M.PANCHAL

Date of decision: /07/2000

C.A.V. JUDGMENT (PER D.M. DHARMADHIKARI, C.J.)

1. The learned counsel appearing for the parties are finally heard on the merits of the case.

2. The appellants are employed in clerical cadre in respondent Gujarat Dairy Development Corporation (hereinafter referred to as 'Dairy Development Corporation') which is running Abad Dairy, represented by the General Manager, respondent No.2.

3. The respondents Nos. 3 to 7 are also employees substantively born on the clerical cadre and are juniors to the appellants, as shown in the combined seniority list. The respondents Nos. 3 to 7 were posted for doing accounting work in Abad Dairy and have been absorbed from the post of Junior Clerk to the post of Junior Accountant.

4. The appellants approached this Court in Special Civil Application No. 4387 of 1985 against the grant of status of Jr. Accountant to respondents Nos. 3 to 7. The post of Jr. Accountant carries higher scale of pay than the post of Jr. Clerk. According to the appellants' case, the respondents Nos. 3 to 7 are juniors and merely happened to work in the Accounts Section. On the aforesaid fortuitous circumstance, they could not have been indirectly given promotion to the post of Jr. Accountant, which carries higher scale of pay and thus supersede the claim of the appellants, who are, admittedly, seniors to respondents Nos. 3 to 7 in the seniority list.

5. The learned Single Judge, S.K.Keshote, J by the impugned order dated 20-11-1997 rejected the alleged superior claim of the petitioners for promotion to the post of Jr. Accountant. The learned Single Judge held that the post of Jr. Accountant is not a promotional post for the post of Jr. Clerks and grant of status of Jr. Accountant to respondents Nos. 3 to 7 on the basis of their experience in the accounting work, cannot be faulted. The learned Single Judge, S.K. Keshote, J placed reliance on decision of the learned Single Judge, Ms. R.M. Doshit, J dated 15-7-1996 passed in Special Civil Applications Nos. 78, 3301, 3454 and 3749 all of 1986 filed on similar claim by other employees in the clerical cadre. The learned Single Judge, R.M. Doshit, J has in great details discussed the merits of the claim

of the petitioners and negatived it.

6. In this Letters Patent Appeal, both the decisions of learned Single Judges S.K.Keshote, J dated 20-11-1997 and of R.M. Doshit, J dated 15-7-1996 have been challenged.

7. Learned counsel appearing for the appellants, who belong to the clerical cadre, contends that merely on a fortuitous circumstance of respondents Nos. 3 to 7 working in the Accounts Section, the appellants' claims for promotion to higher post carrying higher scale of pay could not have been superceded.

8. Learned counsel appearing on behalf of the Dairy Development Corporation has justified the grant of the status of Jr. Accountant to respondents Nos. 3 to 7. On behalf of the Corporation, it is explained that Abad dairy earlier was run by the Municipal Corporation of Ahmedabad. It was taken over by the Gujarat Dairy Development Corporation. At that time, the question of determining the conditions of service of erstwhile employees of Municipal Corporation working in Abad Dairy came up for consideration. The service conditions in the Gujarat Dairy Development Corporation of the erstwhile employees of Municipal Corporation of Ahmedabad working in Abad Dairy were settled in a tripartite settlement reached between the erstwhile employer, i.e., the Municipal Corporation of Ahmedabad, the present employer, i.e., Gujarat Dairy Development Corporation and the employees represented by their Unions.

9. The learned counsel for the Gujarat Dairy Development Corporation invited the attention of this Court to the Charter of Demands of Abad Dairy Employees Association. From the relevant part (at pg 94 of the compilation) one of the Charter of Demands reads as under:-

"7. The duties/functions of the post/designation only on which the employee is posted and which he is being paid the salary and as regards obtaining other works for example, the official of cadre of Peon to take work of Faras from him, of fitter from the Driver and of driver from fitter, of accountant from the Junior Clerk, etc."

10. The above portion of Charter of Demands goes to show that the employees were objecting to taking work from an employee in the lower cadre of higher cadre. The demand was to grant higher status and pay to such

employees discharging duties with higher responsibilities.

11. It is also brought to our notice that on the basis of settlement reached, disputes arose with regard to its implementation and the matter was carried to the Industrial Tribunal, Gujarat under Ref. IT No. 101 of 1973, in which an award was passed on 3-1-1977. The Tribunal granted relief to such workmen or employees who were discharging duties of Clerks, Cashiers and Supervisors respectively for last five years or more to be absorbed on those posts with retrospective effect. The relevant operative part of the said award reads as under:-

"It is, therefore, hereby directed that the 39 workmen employed by the Ahmedabad Municipal Corporation in its Dairy whose names are contained in the list Ex.4/2 and 13/1 who have been doing actually the duties of clerks, cashiers and supervisors respectively for last five years or more be absorbed in the said posts of clerks, cashiers and supervisors, retrospectively with effect from 1.1.1975 irrespective of they not possessing the requisite academic qualifications subsequently prescribed for holding such posts."

12. It is on the basis of the above award of the Industrial Tribunal concerning the posts of Clerks, Cashiers and Supervisors that the Gujarat Dairy Development Corporation took a policy decision, to consider for absorption the cases of Jr. Clerks also, who have experience of more than 5 years in the Accounts Section and discharging duties of Jr. Accountant.

13. On the stand taken on the Award and policy decisions by the Corporation, we do not find that the grievance raised by the appellant-petitioners is legitimate. In the instant case, the grant of status of Jr. Accountant with higher scale of pay to respondents Nos. 3 to 7 is not granted to them by way of either 'upgradation' or 'promotion'. It is a status granted to them by way of 'absorption' and on the basis of a policy decision based on the Award of the Tribunal on adjudication of dispute between the employer and the employees. The policy decision taken on the basis of the Award to consider for absorption the cases of employees borne on a post in lower cadre, but discharging duties of a higher post cannot be said to be either illegal or unjust. That is the view taken by the learned Single

Judge R.M. Doshit, J which has been followed in the impugned order by the learned Single Judge S.K. Keshote, J. The respondents Nos. 3 to 7 having been absorbed on the basis of their long service and experience in the Accounts Section, the appellants-petitioners who might have got no chance to work in the Accounts Section cannot raise the grievance of their alleged supersession.

We find no merit in the case of the appellants. The order of learned Single Judge is legal and just. Consequently, we dismiss the present Letters Patent Appeal.

As the main Appeal is dismissed, the Civil Application for stay does not survive and the same is hereby disposed of as having become infructuous.

(D.M. DHARMADHIKARI, C.J.)

(J.M. PANCHAL, J)

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